

[Senate Bill 198](#) (Morrell)

Date: Introduced

Program: Fire Prevention Fee

Sponsor: Author

Public Resources Code Chapter 1.5 (commencing with Section 4210) of Part 2 of Division 4

Effective: January 1, 2016

Michele Pielsticker (Chief) 916.322.2376

John Cortez (Analyst) 916.445.6662

**Summary:** Repeals the fire prevention fee.

**Purpose:** To repeal a fee the author contends was poorly implemented and has “constitutional issues...before it results in even steeper costs to the State and to taxpayers.”

**Fiscal Impact Summary:** Annual revenue loss of \$78.7 million.

**Existing Law:** Existing law<sup>1</sup> requires the Board of Equalization (BOE) to collect an annual fire prevention fee in accordance with the Fee Collection Procedures Law (FCPL).<sup>2</sup> The fee benefits the California Department of Forestry and Fire Protection (CAL FIRE), which is responsible for fire prevention and suppression in areas that the State Board of Forestry and Fire Protection (Fire Board) has determined are state responsibility areas (SRAs). As required,<sup>3</sup> the Fire Board adopted emergency regulations to establish a fire prevention fee. The fee amount is not permitted to exceed \$150 per habitable structure on a parcel located within an SRA, except as adjusted by the Fire Board. Public Resources Code (PRC) Section 4102 defines an SRA as an area over which the Fire Board determines that the prevention and suppression of fires is primarily the state’s financial responsibility. PRC Section 4125 requires the Fire Board to classify all state lands and determine the areas in which the state has primary financial responsibility for fire prevention and suppression.

Beginning July 1, 2013, the Fire Board may annually adjust the fire prevention fee rate.<sup>4</sup> Any adjustment reflects the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States. The \$152.33 fee for fiscal year (FY) 2014-15 remained the same from FY 2013-14. Generally, bills will amount to \$117.33, as most owners receive a \$35 reduction for also paying a local fire fee.<sup>5</sup>

**Collection and Administration.** Commencing with FY 2011-12, the BOE annually collects the fire prevention fee. The FCPL governs the BOE’s collection function.

The FCPL generally provides for the BOE’s administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE’s authority to adopt regulations related to the FCPL’s administration and enforcement.

By each January 1, CAL FIRE transmits to the BOE the name, address, and assessment amount of each person liable for the fee. In addition, CAL FIRE provides to the BOE a telephone number that fee payers may call if they have questions.

Annual fire prevention fee assessments are due and payable to the BOE 30 days after assessment. The amount assessed becomes final at the end of the 30-day period, unless a fee payer files a petition for redetermination within that period. If a fee payer files a timely petition for redetermination, all legal

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<sup>1</sup> Public Resources Code (PRC) Section 4213.

<sup>2</sup> Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code (RTC).

<sup>3</sup> PRC Section 4212(a).

<sup>4</sup> PRC Section 4212(b).

<sup>5</sup> If a habitable structure is also within the boundaries of a local agency that provides fire protection services, the property owner receives a \$35 reduction for each habitable structure. Over 90% of habitable structures in a SRA are also covered by a local fire protection agency.

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collection actions are held until CAL FIRE's final determination. In certain cases, CAL FIRE may treat a petition for redetermination filed after the 30-day time period as an administrative protest or a claim for refund. CAL FIRE may treat the untimely petition as an administrative protest or claim for refund if it determines that the facts presented indicate that the fire fee may have been excessive or that the amount or the application of the fee may have been the result of a certain type of error.<sup>6</sup>

The BOE lacks authority to decide or review any petition for redetermination or claim for refund of a fee that CAL FIRE determines is due. CAL FIRE handles all appeals and determines refund eligibility, referring persons entitled to a refund to file a refund claim with the BOE.<sup>7</sup>

The fire prevention fee may not be collected if, in any given fiscal year, the SRA Fire Prevention Fund (Fund) has sufficient funds to finance specified prevention activities. The BOE began the FY 2014-15 billings in early March 2015.

An exemption from the fire prevention fee provides relief for any habitable structure that is subsequently deemed uninhabitable as a result of a natural disaster during the year for which the fee is due. If the habitable structure has not been repaired or rebuilt, then the exemption may apply to one subsequent year.<sup>8</sup>

**Proposed Law:** This bill repeals the fire prevention fee. This bill is effective January 1, 2016.

**Background:** On July 7, 2011, Governor Brown signed ABx1 29,<sup>9</sup> which required the BOE to collect the new fire prevention fee, commencing with FY 2011-12. However, collection of the fee was delayed due to several factors, including adoption of the emergency regulations and the costs of implementation.

Governor Brown's signing message for ABx1 29 states, in part, "A fee consistent with the 'beneficiary pays principle,' such as the one intended in this bill, can achieve significant General Fund savings. However, as currently drafted, the revenues may not materialize. I am directing the Department of Finance and CAL FIRE to work with the Legislature during the remaining legislative session to identify necessary clean-up language to realize these revenues."

Since then numerous bills have been introduced to repeal, replace, or provide a fire fee exemption. Only AB 2048 (Ch. 895, Stats. 2014, Dahle), which made numerous changes to the program, has become law.

Other bills introduced during the last three legislative sessions include:

Bill No.	Session	Author	Subject
AB 23	2013-14	Donnelly	Proposed repeal of the fire prevention fee.
AB 124	2013-14	Morrell	Proposed repeal of the fire prevention fee.
AB 468	2013-14	Chesbro	Proposed repeal of the fire prevention fee and replaced with a 4.8% surcharge on commercial and residential fire and multi-peril insurance policy premiums.
AB 929	2013-14	Jones	Intended to implement reimbursement procedures for persons who have paid a fire prevention fee covering a structure that was previously in an SRA, but that was determined to no longer be within the boundaries of that state responsibility area.

<sup>6</sup> PRC Section 4220.1.

<sup>7</sup> PRC Section 4213(a)(3)(A) and (B) does not allow BOE to accept claims for refund on the basis that the person is not subject to the fee, or that the fee is improperly calculated. However, the BOE may directly process certain administrative refund claims (e.g. overpayments).

<sup>8</sup> PRC Section 4213.1.

<sup>9</sup> Chapter 8, Stats. 2011.

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Bill No.	Session	Author	Subject
AB 1519	2013-14	Donnelly	Would have deleted the recurring 20% penalty for final redeterminations.
AB 1954	2013-14	Harkey	Would have provided a 90-day period for a petition for redetermination to become final, and within that 90-days allow a person to appeal to the BOE the denial of a refund.
AB 2048	Ch. 895, Stats. 2014	Dahle	Changes included: (1) made optional the Fire Board's annual rate adjustment; (2) fee relief for a natural disaster; (3) added an "administrative protest" procedure to be administered by CAL FIRE; (4) eliminated the requirement to notify both the BOE and the Fire Board of a petition for redetermination; and (5) replaced the recurring 20% penalty with a one-time 10% penalty, and prohibits the 20% penalty from being imposed or added to the fee that remains unpaid.
SB 17	2013-14	Gaines	Legislative intent to repeal the fire prevention fee.
SB 125	2013-14	Gaines	Proposed exemption from the fire prevention fee for those properties with a habitable structure that lies within both an SRA and the boundaries of a local fire district that provides fire protection service.
SB 147	2013-14	Gaines	Proposed exemption from the fire prevention fee for those property owners with income of less than 200% of the federal poverty level.
SB 832	2013-14	Gaines	Proposed a natural disaster exemption from payment of the fire prevention fee for structures destroyed or damaged.
SB 1413	2013-14	Wyland	Would have extended the date by which the annual fire prevention fee assessment is due and payable, as well as the time period in which to file a petition for redetermination, from 30 to 60 days
ABx1 24	2011-12	Blumenfield	Proposed a fire protection fee to fund fire suppression and prevention and emergency response efforts in SRAs.
ABx1 45	2011-12	Jeffries	Proposed repeal of the fire prevention fee.
AB 1506	2011-12	Jeffries & Cook	Proposed repeal of the fire prevention fee.
SB 1040	2011-12	Evans	Proposed repeal of the fire prevention fee.
AB 2474	2011-12	Chesbro	Proposed a credit of up to \$150 against the fire prevention fee of amounts paid to a local agency for fire protection services.

### Commentary:

- 1. Effect of the bill.** This bill repeals the fire prevention fee. Currently, the BOE is responsible for the issuance of fee assessments and collection of the fee, as well as processing CAL FIRE's adjustments to the fee that may result in a refund. As this bill is prospective, a repeal of the fire prevention fee would prevent future annual billings, but would not affect assessments that are due and owing prior to the repeal. BOE staff would work with CAL FIRE to address program administration and account maintenance issues.
- 2. Related bills.** [SB 520](#) (Berryhill) also repeals the fire prevention fee. [SB 250](#) (Gaines) and [AB 203](#) (Obernolte) both extend the date by which the annual fire prevention fee assessment is due and payable, as well as the time period in which to file a petition for redetermination, from 30 to 60 days. [AB 301](#) (Bigelow) prorates the fire prevention fee for those owners that own the habitable

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structure for only a portion of the year. [AB 1202](#) (Mayes) provides a fire prevention fee reduction in an amount equal to the amount paid to a local fire district for fire prevention services.

**Administrative Costs:** As previously explained, this bill would be effective January 1, 2016, and therefore prevent future annual billings. However, BOE would incur costs related to the collection of outstanding amounts, maintenance of accounts, and other administrative functions for the FY 2014-15. As this bill progresses, the BOE may be able to estimate costs after repeal of the fire prevention fee.

**Revenue Impact:** Repeal of the fire prevention fee would stop revenues from being assessed or collected. The revenue for the first three billing years averaged \$78.7 million. Assessment billings for FY 2014-15 will be from March 2015 through June 2015, with anticipated revenues of \$87 million.